

MEETING MINUTES **FOR SEPTEMBER 24, 2012**

A Regular Meeting of the Board of Selectmen was held on Monday, September 24, 2012 in the Conway Hearing Room at 7:00 PM. Present were Selectman Andrew Deslaurier, Chairman, Selectman Michael Rosa, Vice Chairman, Selectman David Gagliardi, Secretary, Selectman Robert Correnti, Member, Selectman Robert Accomando, Member, Town Manager John Curran and Assistant Town Manager Cathleen O'Dea.

CALL TO ORDER

OPEN MICROPHONE

There was no one present who wished to speak at Open Microphone.

ANNOUNCEMENTS

VACANCIES ON BOARDS AND COMMITTEES

Secretary David Gagliardi stated the Board of Selectmen are accepting applications for the following positions:

POSITION

MEMBERS

Selectmen Appointments

Arts Council	3
Cabot Land Reuse Committee	3
Commission on Disability	1
Elderly and Disabled Taxation Fund Committee	1
Financial & Compliance Audit Committee	2

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Historic Districts Commission	4 alt.
Open Space & Recreation Committee	2
Scholarship Foundation Committee	1
Substance Abuse Prevention Committee	8
Traffic Management Committee	1 (East)

Town Manager Appointments

Beautification Committee	3
Housing Partnership Committee	2

Moderator Appointments

Composting Committee	6
Financial & Compliance Audit Committee	3
Personnel Board	4
Town Meeting Warrant Action Committee	1

Please note that the above positions are not paid positions. Applicants should have some knowledge of Municipal Government. Brief job descriptions are available at the Selectmen's Office. Applications must be sent to the Board of Selectmen, Town Hall, 365 Boston Road, Billerica.

DPW WATER CONSERVATION REBATE PROGRAM

Secretary David Gagliardi stated the Town of Billerica has a Rebate Program for the replacement of toilets, urinals and clothes washers with water conserving features. The "Water Conservation Fund" was established to mitigate the demands on the Town water supply and allows the DPW to offer these rebates. To qualify for the rebate, Billerica water customers must be in good standing and own the property where the fixtures will be changed out. Tenants may participate with written permission from the property owner. Toilets, urinals and clothes washers must be specific models to qualify for the rebate. Go to www.billericadpw.org or contact the DPW Director's Office for a list of qualifying models. Qualifying toilet rebates are \$100. Qualifying urinal rebates are \$25. Qualifying clothes washer rebates are \$225. All rebates will be applied as a credit on your water bill. Rebate applications can be picked up at the DPW Director's Office at Town Hall or at the Water Treatment Facility located at 270 Treble Cove Road. Applications must be submitted to the DPW Office within 90 days of purchase.

**SUNSHINE GALS KITCHEN – MEALS PREPARED AND SERVED
FOR NEEDY FAMILIES LIVING IN BILLERICA**

Secretary David Gagliardi stated the Sunshine Gals Kitchen prepares and serves meals on the fourth Saturday of each month between 12:00 Noon and 1:30 PM for needy families living in Billerica. This luncheon is homemade and prepared and served at the First Parish Church located in Billerica Center. If you have any questions, please call Jo Leary at 978-270-4509 or go to sunshinegals@yahoo.com.

FALL 2012 TOWN MEETING BEGINS OCTOBER 2, 2012

Secretary David Gagliardi stated Fall 2012 Town Meeting begins Tuesday, October 2nd, 2012 at 7:30 PM in the Town Hall Auditorium.

COMMUNITY FUNDS 2012

Secretary David Gagliardi stated grant application forms are available in the Office of the Board of Selectmen. Questions regarding the Community Funds should be directed to the Office of the Board of Selectmen, Town Hall, 365 Boston Road, Billerica, MA 01821 or 978-671-0939. Applications for the Community Funds will be accepted until 4:00 PM on Friday, November 2, 2012 in the Office of the Board of Selectmen. The Board expects to announce the awards at its meeting of Monday, December 7, 2012. Awards will be presented at the meeting of December 17, 2012.

PUBLIC SAFETY MEMORIAL

Secretary David Gagliardi stated the Billerica Public Safety Memorial, which will honor Billerica Police, Fire and Paramedics who have died in the line of active duty, will be located in front of Town Hall. It will be built with private funding. The dedication is planned for the Fall of 2013. Help make this memorial possible by making a tax-deductible donation. Donations of \$75.00 or more will be recognized on a plaque in Town Hall. For more information and a copy of the donation form, which is important to insure proper recognition of donors, please go to www.billericapublicsafetymemorial.org. The donation and donation form can be sent to the Billerica Public Safety Memorial Fund, care of the Billerica Board of Selectmen, Billerica Town Hall, 365 Boston Road, Billerica MA 01821.

HAPPY HOLIDAYS – 2012 SCHEDULE OF EVENTS

Secretary David Gagliardi stated the Billerica Holiday Festival has announced the following 2012 Schedule of Events:

Saturday, November 10th

Home for the Holidays display set up begins at the Library

Friday, November 16th

Home for the Holidays Reception

Saturday, November 17th

Home for the Holidays Display Open to the Public

Saturday, December 1st

Free Outdoor Public Skating. This year the “rink” will be bigger (30’ by 60’) to accommodate more skaters. Skating will be available from Noon to 6:00 PM.

Saturday, December 1st

The Tree Lighting Festivities will begin at 4:30 PM and conclude with the actual Tree Lighting at 5:30 PM.

Saturday, December 8th

Pictures with Santa will be taken at the Bennett Library from 11:00 AM until 2:30 PM.

Sunday, December 9th

Last day for Home for the Holidays Display

Monday, December 10th

Home for the Holidays Drawings

If you have any questions, you can go the Billerica Holiday Festival website at info@billericaholidayfestival.org.

**16TH ANNUAL EVENING OF WINE TASTING AT THE BILLERICA
PUBLIC LIBRARY ON OCTOBER 26, 2012**

Secretary David Gagliardi stated the Billerica Public Library Foundation, Inc. is holding their 16th Annual Evening of Wine Tasting at the Billerica Public Library on Friday, October 26th from 7:00 PM until 9:00 PM. There will be fine wines, beers, hors d'oeuvres and a Silent Auction. Tickets are available at the Library and at Lincoln Liquors. Advance tickets are \$30 and \$35 at the door. For further information please call 978-671-0948.

**THANK YOU TO THE YANKEE DOODLE HOMECOMING
COMMITTEE**

Secretary David Gagliardi stated on behalf of this Board, I would like to thank the Billerica Yankee Doodle Homecoming Committee for putting on another great Yankee Doodle Homecoming Weekend. We really appreciate the hard work that they do all year long to give the community an event that they can truly be proud of.

OLD BUSINESS

MR. RICHARD YOUNG – APPRECIATION LETTER

Selectman Robert Correnti stated this came up at our last meeting. I have drafted the following appreciation letter to Mr. Richard Young:

Dear Mr. Young:

At its meeting of September 24, 2012, the Billerica Board of Selectmen voted unanimously to publicly recognize and extend its sincerest appreciation to you for your twenty-two years of dedicated service on the Billerica Historic Districts' Commission.

Your commitment to Billerica has been steadfast through the years. From the initial adoption of our Historic Districts to the present day, your leadership has been instrumental in the development and preservation of the Historic Districts in Billerica.

On behalf of all Billerica residents, we extend our sincerest gratitude and appreciation for your spirit of volunteerism, dedication and service. We wish you all the best in the years to come.

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Selectman Michael Rosa, seconded by Selectman Robert Correnti, made a motion that the Board approve the letter as written.

It was voted: 5 – In Favor
 0 – Opposed

BOARD OF SELECTMEN POLICIES AND PROCEDURES – 11.0
“OTHER APPOINTMENTS” (SECOND READING)

Secretary David Gagliardi stated this is the second reading of the proposed changes to the Board’s Policies and Procedures. I made the corrections and the adjustments. One note, in my earlier version I inadvertently deleted the Water/Sewer Oversight Board, who were very distressed over that. I did put them back in.

11.0 Other Appointments

- 11.1 The Chairman of the Board shall annually appoint no more than two (2) Board members to each of the following Standing Committees of the Board: Bike Path, Cable Advisory, Water/Sewer Oversight Board, Kent Fund Scholarship, Northern Middlesex Council of Government, Open Space and Recreation, Senior Citizen’ Advisory, Town/School Fiscal Subcommittee, Traffic Management Committee and the Water Conservation Oversight Committee. Selectmen appointed to these committees shall keep the entire Board apprised of important committee developments.
- 11.2 The Board shall vote annually to appoint no more than two (2) Board members to each of the following committees created by Town Meeting. The Billerica Housing Partnership Committee, Cabot Land Reuse Committee, Long Range Master Plan Committee and the Street Acceptance and Discontinuance Committee. The Selectmen appointed to these committees shall keep the entire Board apprised of developments.
- 11.3 The Chairman of the Board shall serve on or annually appoint either the Town Manager or a designee to the Lowell Regional Transit Authority. Appointee shall apprise the Board of developments.
- 11.4 All five (5) members of the Board shall be appointed to the Billerica Community Alliance and Community Funds (broken into subcommittees) and the Board shall appoint one (1) member to serve on Community Teamwork, Inc.

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11.5 Pursuant to Chapter 357 of the Acts of 1972, the Town Manager may annually appoint an alternate member to the Northern Middlesex Council of Government. Such appointee shall keep the entire Board apprised of developments.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board adopt the new and revised 11.0 Other Appointments.

It was voted: 5 – In Favor
 0 – Opposed

**ONE DAY BEER AND WINE / ONE DAY ALL ALCOHOL
LICENSES**

Selectman Robert Correnti stated this came up at a recent meeting regarding signatures on applications for One Day All Alcohol Licenses or One Day Beer and Wine Licenses. I did some research at your request. In the past this Board did not require department signatures on the application form. We did a review of past applications and it confirmed that practice. No department signatures were noted on past requests. However, at the Board's meeting of April 9, 2012, the Harley Davidson dealership located on Chelmsford Road did appear before this Board regarding a One Day License and during that discussion it was noted that the dealership was requesting a number of licenses. Additionally due to the number of requests and possible traffic issues, the Board approved these one day requests subject to the approval of the Traffic Safety Officer. It appears that the requests for department signatures is out of an abundance of caution that grew out of that discussion. The record should indicate that there have been no issues with these one day licenses at that location. So requiring signatures for one day licenses has not been our policy in the past, based upon past practice and the fact that there have been no issues. Instituting the policy across the board I would say is not warranted. However, as was the case with the unique situation presented by the Harley Davidson dealership, I think this Board should reserve the right to require any department signatures and feedback on any one day license requests should the Board deem it in the best interest of public safety. So I think we should just continue as we have been doing without requiring signatures, however, on a case by case basis, if something were to erupt, we could require the signatures. Thus I would recommend that we continue our present practice of not requiring department signatures and that the Board reserve the right to make any such request when it deems such request appropriate.

Secretary David Gagliardi stated I would like to see actual language put in our Policies and Procedures as to which particular type of license would require what particular type of signature or no signatures at all. I would be happy to research that and come back before this Board with changes to our Policies and Procedures.

**HOLIDAY FESTIVAL COMMITTEE, RE: ONE DAY ALL
ALCOHOLIC LICENSE FOR NOVEMBER 16, 2012**

Secretary David Gagliardi stated the Billerica Holiday Festival Committee is seeking a One Day All Alcoholic License for their Holiday Festival on Friday, November 16, 2012 from 6:00 PM until 10:00 PM at the Billerica Public Library.

Mr. John Gagliardi, Secretary of the Holiday Festival Committee, came to the podium and stated the Billerica Holiday Festival Committee is seeking a One Day All Alcoholic License for our Holiday Festival on Friday, November 16, 2012 from 6:00 PM until 10:00 PM at the Billerica Public Library.

Selectman Robert Correnti stated I am on the Library Board of Directors and I feel that I can vote on this without bias or personal gain.

Selectman David Gagliardi, seconded by Selectman Michael Rosa, made a motion that the Board approve a One Day All Alcoholic License for the Holiday Festival Committee for their Holiday Festival on Friday, November 16, 2012 from 6:00 PM until 10:00 PM at the Billerica Public Library and waive all fees.

It was voted: 5 – In Favor
 0 – Opposed

**KRISTEN CORBETT SCHOLARSHIP COMMITTEE, RE: 5K
ROAD RACE ON OCTOBER 6, 2012**

Secretary David Gagliardi stated the Kristen Corbett Scholarship Committee is seeking permission to hold a 5K Road Race on Saturday, October 6th. This race will begin and end at the Billerica Lodge of Elks on Webb Brook Road. We do have a letter from Traffic Safety Officer Martin Conway approving this.

Ms. Carolyn Corbett came to the podium and stated I am here requesting permission to hold our 5K Road Race on Saturday, October 6th to raise money for the Kristen Corbett Scholarship Fund. This race will begin and end at the Billerica Lodge of Elks on Webb Brook Road.

Selectman David Gagliardi, seconded by Selectman Michael Rosa, made a motion that the Board grant permission to the Kristen Corbett Scholarship Committee to hold a 5K Road Race on Saturday, October 6th beginning at 10:00 AM. This race will begin and end at the Billerica Lodge of Elks on Webb Brook Road.

It was voted: 5 – In Favor
 0 – Opposed

NEW BUSINESS

**TRIPLE SUSHI, INC., D/B/A NANA JAPANESE STEAK HOUSE,
RE: CHANGE OF HOURS FOR THURSDAYS AND FRIDAYS, 11:00
AM UNTIL 1:00 AM, (NEW HOURS) AND SATURDAYS, 11:00 AM
UNTIL 1:00 AM (NEW HOURS) AND A WEEKDAY
ENTERTAINMENT LICENSE FOR KARAOKE AND A DISC
JOCKEY**

Secretary David Gagliardi stated Triple Sushi, Inc., d/b/a Nana Japanese Steak House, located at 199 Boston Road is seeking a Change in their Hours for Thursdays and Fridays (new hours to be 11:00 AM until 1:00 AM) and for Saturdays (new hours to be 11:00 AM until 1:00 AM). They are also seeking a Weekday Entertainment License for Karaoke and a Disc Jockey.

Attorney James Dangora, Jr. came to the podium and stated I am here tonight representing Triple Sushi, Inc., d/b/a Nana Japanese Steak House, located at 199 Boston Road who is seeking a Change in their Hours for Thursdays and Fridays (new hours to be 11:00 AM until 1:00 AM) and for Saturdays (new hours to be 11:00 AM until 1:00 AM). They are also seeking a Weekday Entertainment License for Karaoke and a Disc Jockey. Currently their hours for Thursday and Friday are 11:00 AM until 11:00 PM and Saturday is 11:00 AM until Midnight. What they are looking to do is be able to close at 1:00 AM on Thursday, Friday and Saturday. Back in July we went before the Zoning Board of Appeals for a Special Permit to close at 1:00 AM, which was granted. You can see on the application itself that the Building Inspector, the Board of Health, the Police Department, the Fire Department and the Treasurer have all signed off. The bottom line is their customers have asked for this and they would like to appease their customers.

Secretary David Gagliardi stated is this Entertainment License for weekdays only?

Attorney James Dangora, Jr. stated yes, it is for weekdays only; no Sunday. The hours will be 11:00 AM until 11:00 PM Monday thru Wednesday and 11:00 AM until 1:00 AM Thursday, Friday and Saturday and no Sunday.

Selectman David Gagliardi, seconded by Selectman Michael Rosa, made a motion that the Board approve a Change in their Hours for Triple Sushi, Inc., d/b/a Nana Japanese Steak House, located at 199 Boston Road. New hours of operation to be Monday thru Wednesday, 11:00 AM until 11:00 PM, Thursday thru Saturday, 11:00 AM until 1:00 AM and Sunday, Noon until 10:00 PM.

It was voted: 5 – In Favor
 0 – Opposed

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Selectman David Gagliardi, seconded by Selectman Michael Rosa, made a motion that the Board approve a Weekday Entertainment License for Triple Sushi, Inc., d/b/a Nana Japanese Steak House, located at 199 Boston Road. Hours of operation will be 11:00 AM until 11:00 PM Monday thru Wednesday and 11:00 AM until 1:00 AM Thursday, Friday and Saturday and no Sunday.

It was voted: 5 – In Favor
 0 – Opposed

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board approve a Common Victuallers License for Triple Sushi, Inc., d/b/a Nana Japanese Steak House, located at 199 Boston Road.

It was voted: 5 – In Favor
 0 – Opposed

LOCAL INITIATIVE PROGRAM APPLICATION FOR LOCAL ACTION UNITS FOR AVA ESTATES, AKA ARAKELIAN FARMS, 90 RANGEWAY ROAD IN BILLERICA

Town Manager John Curran stated this is a Local Initiative Program application for Ava Estates, aka Arakelian Farms, located at 90 Rangeway Road. It is 26 units, of which 4 would be affordable units. This is to sign as an applicant, so that they would qualify. The end result for the Town will be these 4 units will be applied to our Affordable Housing stock and it requires a signature form this Board of Selectmen and the Chairman of the local Housing Partnership Committee. Nothing happens tonight by signing this. It still has to go through the State and it will come back before the Town to be reviewed.

Selectman Michael Rosa stated this being a LIP that the Town is involved in, are they all rental properties?

Town Manager John Curran stated no, they are all condominiums for sale. The only thing that the Town will get credit for is the four units that would be affordable units.

Selectman Robert Correnti stated isn't there usually a contribution that they would have to make?

Selectman Michael Rosa stated we do have a By-Law that states that these types of projects, a certain percentage of them have to be affordable. This is essentially a 40B, thus 25 percent of this project needs to be affordable. What we have done in the past is if there was 20 units, 25% of them would be affordable. But if you have 21 units, obviously you can't dice one unit into percentages, so in the past that value of that percentage of that unit would come to the Town and the money would be used for

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Affordable Housing purposes. That is how we accumulated money over the years for Affordable Housing. So being that there are 27 units here, have we calculated out what the partial unit contribution would be?

Town Manager John Curran stated they are over that. There is no money coming back to the Town, if that is what you are asking. It is 26 units and they get a 20% density bonus by going through this program and the 4 units covers the ratio. It is the additional units that count. So it is 50% of the additional units. So with the 4 units, it adds up to be over what they are required to have and there is not a partial number there.

Selectman Robert Correnti stated I just want to insert the Housing Trust into this equation, where if there is something coming to the Town, funds or something the Housing Trust can do to work with the Developer or whatever. If there is some role that the Housing Trust can play in this, fine. If there is no role, that is fine too.

Mr. Peter Cricones, the Builder/Developer for this Ava Estates Project, and Attorney Carla Page, who represents Mr. Cricones, both came to the podium and gave a detailed presentation and answered questions regarding this project.

Brief discussions ensued regarding the fact that these affordable units will be affordable in perpetuity, the fact that Town Counsel has not yet reviewed the application, the fact that the timeline for this project has taken so long, with two extensions, because there were neighbors that legally challenged the project and other abutter issues and the fact that there is a local Housing Partnership Committee.

The Board decided they would not vote on this issue until they had a legal opinion from Town Counsel.

MASSACHUSETTS STATE LOTTERY COMMISSION, RE: KENO TO GO AT GEORGIO'S LIQUORS, 446 BOSTON ROAD

Town Manager John Curran stated this Board received correspondence from the Massachusetts State Lottery Commission that they are offering a KENO monitor to existing KENO To Go Agents to display the game at their location. In accordance with M.G.L. Chapter 10, Section 27A, as amended, this Board is hereby notified of the Lottery's intent to install a monitor at Georgio's Liquors located at 446 Boston Road in Billerica. If this Board objects to this agent receiving a monitor, we must send a letter within twenty-one days after their letter was received, which was September 7th, 2012. This is basically a housekeeping item and you can just place this on file.

OLD BUSINESS

TOWN MANAGER REPORTS

Town Manager John Curran stated I do have a special “Employee Recognition” that developed over the weekend. There was a baby born on a front lawn next to a lamp post. A woman went into labor and our paramedics and Police Department responded and did an excellent job. I don’t know whether it was a boy or a girl, but this child does not have a lot of patience. They could not get the mother into the ambulance, she delivered right on the front lawn. Everyone was healthy and fine and it is a credit to our Public Safety personnel that were there. I am going to recommend that this Board recognize these personnel and maybe at a later date we can do some other type of recognition. I would like to mention the names of the Public Safety personnel that were involved:

Dispatcher Kathleen Murphy
Dispatcher Donald Hancock
Officer Dwayne Eidens
Officer Timothy McKenna
Paramedic Dwight Curtin
Paramedic Tony Degrecchi
Firefighter Richard Hayes
Firefighter Joseph Brandywine
Firefighter Norman Poole

By the way, I think the first person on the scene was our Police Chief Dan Rosa, because he lives a couple of doors down. I would like to recognize him as well.

ADDENDUM

600 TECHNOLOGY PARK – SIGNS

Building Commissioner Mark LaLumiere came to the podium and stated I had forwarded this to the Town Manager a couple of weeks ago regarding some banners for Technology Park. They are trying to spend a decent amount of money in the park on a signage package to help make the park more understandable. We are working with the applicant to get the rest of the signage approved. One of the things they were looking for were some banners to go on the light poles. The Town Manager brought this up to the Board and you approved it for sixty days. I believe the applicant is looking to make them permanent. I do see a need as the Building Commissioner to be able to permit this type of signage. There is wording in the zoning that banners are a prohibited sign unless they are declared by the Board of Selectmen to provide a public service, in which case the sign should be permitted without a permit. I guess you could make the argument that these

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banners would be a public service if it is not advertising a specific business, it is more for the entire park. It would make it easier to get around the park. It is somewhat confusing and there are a lot of vacancies over there now and I know they are trying to fill the vacancies with tenants. I believe the entire zoning ordinance needs to be gone through. The signage portion of it really needs to be brought up to date. It is a work in progress. There is a Zoning By-Law Review Committee that has kind of fallen by the way over the summer. There are a couple of vacancies that need to be filled to ramp it back up.

Selectman Michael Rosa stated I think it is a stretch to say that advertising at Technology Park is a municipal public service. I think the intent of that was more like when we do the banners in the Town Common to promote tree lighting and stuff like that. This is a private park that wants to advertise their park for their benefit versus a public type event. I would agree with Mr. LaLumiere that the Sign By-Law has been around since before I was here, so it probably could use some refreshing.

Building Commissioner Mark LaLumiere stated I certainly am not here to argue on behalf of the tenant, but as the Zoning Enforcement Officer, I do see a need for the zoning to change. I think it would be a definite benefit to the Town to see those vacancies in the park filled. My office is trying to work with businesses to make permitting easier and more efficient.

Selectman Robert Correnti stated I think this could be a benefit. It says here that it would help reduce missed turns and u-turns as a result of missing the park entrance. I think that could be a benefit to the neighborhood and the residents. I think there could be some residential and community benefit here. The signage would really be within the park itself. I will go with the stretch that this might help reduce unnecessary traffic within the neighborhood.

Selectman David Gagliardi stated is Technology Way a public or private way?

Building Commissioner Mark LaLumiere stated I do not know offhand.

Selectman David Gagliardi stated I really do not see a problem with this. It is not like it is on Concord Road. It is on their driveway leading to their businesses.

Selectman Robert Accomando stated I have worked with Mark on a lot of things. We are trying to fill these vacant commercial/industrial spaces and if we can help them in any way, I feel it is to the Town's benefit. It is not on Concord Road, it is on their driveway, thus I would support this. I too think the Signage Zoning is in dire need of restructure.

Chairman Andrew Deslaurier stated municipalities are sort of branding themselves as a technology focused towns. I applaud you for working with these companies and I feel this could be a major benefit to our town.

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Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion to amend the Board's decision of September 10, 2012 and allow the Gutierrez Company to install four banners on existing light poles along the entrance drive to Technology Drive permanently.

It was voted: 5 – In Favor
 0 – Opposed

FALL 2012 TOWN MEETING WARRANT ARTICLES

Town Manager John Curran stated while we have the Building Commissioner here, maybe we could take up Warrant Article 31 that was submitted by the Building Commissioner.

ARTICLE 31 - TO AMEND ZONING BY-LAW

To see if the Town will vote to amend the Zoning By-Laws by deleting the following section:

Section 7.D.7 – An accessory building, structure or use with a gross square footage of 100 or less may be placed in the side or rear yard of a lot with a 7 ½ foot side yard and a 10 foot rear yard. All other accessory buildings, structures or uses shall comply with the minimum yard requirements for principal buildings, structures or uses.

And replace Section 7.D.7 with the following:

Section 7.D.7 – An accessory building with a gross square footage of 120 or less and a maximum height of 15' shall be exempt from the rear and side yard setback requirements. All other accessory buildings and structures shall comply with the minimum yard requirements for principal buildings and structures;

or act in relation thereto.

Brief discussions ensued.

Selectman David Gagliardi, seconded by Selectman Michael Rosa, made a motion that the Board recommend Article 31 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

LEGAL OPINION – APPOINTMENTS

Secretary David Gagliardi stated this is a legal opinion from Town Counsel Patrick Costello in response to the question that was raised about whether this Board had violated the Town Charter when we made appointments earlier in June. Town Counsel has weighed in on it and has determined that this Board did not violate the Town Charter and I would like to read the ruling from Town Counsel Patrick Costello into the record.

Dear Members of the Board of Selectmen:

You have requested my opinion whether a candidate for appointment to a vacant Town agency or employment position who submits his or her statement of qualifications more than ten (10) days after the date of posting or publication of the Notice of Vacancy for said position would be eligible for appointment pursuant to the provisions of the Billerica Home Rule Charter (the “Charter”) Section 7-13. In my opinion, such a candidate may, in the discretion of the Board of Selectmen, be appointed to fill the vacant position described in the Notice of Vacancy, notwithstanding his/her failure to submit a statement of qualifications within the ten day period referenced in the Charter.

Pursuant to Section 3-2 (c) of the Charter, the Board of Selectmen (“the Board”) is vested with broad appointment power for various Town agencies and positions. Section 7-13 of the Charter establishes a procedure for posting/publishing public notices for vacant municipal positions. This Section of the Charter requires that when a vacancy in any Town agency or “employment” occurs, the Board of Selectmen or other appointing authority “shall forthwith cause public notice of the vacancy..... to be posted on the town bulletin board for not less than ten days and published in a local newspaper”. (*Emphasis added.*) Section 13 further provides that “[a]ny person who desires to be considered for appointment to the vacancy may, within ten days following the date notice is posted or published, whichever is later, file with the appointing authority a statement setting forth his qualifications for the position”. (*Emphasis added.*) The question posed is whether this sentence of Section 7-13 requires applicants seeking appointment to file a statement of their qualifications within the referenced 10 day period as a prerequisite to his/her appointment.

The underlying intent of the drafters of the Charter with respect to this submission of qualifications provision is certainly subject to some speculation given the context within which it appears in Section 7-13. I believe, however, that the disposition of this issue must be based upon an analysis of the specific language of the Charter, considering both the context in which it appears and the purpose or objective Section 7-13 seeks to achieve. Most significantly, the word “may” appearing in legislation is widely construed as a permissive term which does not impose a mandate but simply authorizes an act. Conversely, the use of

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the word “shall” imposes a mandatory condition that requires strict compliance or adherence. Therefore, use of the word “may” with respect to the statement of qualifications submittal provision of Section 13 suggests that this language is directory in nature rather than mandatory.

The provisions of a municipal charter must be consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices. M.G.L. C. 43B, § 20. Pursuant to Section 3-2 (c) of the Charter, the Board of Selectmen (“the Board”) is vested with broad appointment powers for various Town agencies and positions. Furthermore, the plan of the municipal government is to be ascertained from *all* of the provisions of the charter. Fisk v. City of Worcester, 219 Mass. 428, (1914). A strict literal reading of one provision of a body of legislation will not be adopted if the result will be to thwart or hamper the accomplishment of the statute’s obvious purpose, and if another construction which would avoid this undesirable result is possible. Watros v. Greater Lynn Mental Health and Retardation Ass’n, 421 Mass. 106, 113 (1995). When interpreting a charter, ordinance or bylaw, one must not look at its provisions in isolation, but should read them contextually. Owens v. Board of Appeals of Belmont, 11 Mass. App. Ct. 994, 995 (1981). The plain meaning of words appearing in legislation must be constructed in accordance with their common usage. Shabshelowitz v. Fall River Gas. Co., 412 Mass. 259, 262 (1992). Applying these standards, courts, when required to interpret the word “may”, will typically recognize it as a permissive term which does not impose a mandate but simply authorizes an act; while use of the word “shall” is construed to impose a mandatory condition. School Committee of Greenfield v. Greenfield Educ. Ass’n, 385 Mass. 70, 81 (1982).

It is also relevant to this analysis that the clear purpose and intent of the subject Charter provision is to afford notice to, and an opportunity for, interested candidates to apply for Town appointments and to provide Town appointing authorities with ample time to “permit reasonable consideration of all applicants”. (Note that pursuant to other language in §7-13, permanent appointments can’t be made until at least 14 days have elapsed since posting/publication of the vacancy notice). To this end, it is clear that a notice of vacancy *must* be posted and published at least 10 days in advance of any appointment. However, the language of Section 7-13 relative to the 10 day period for submission of qualification statements is subsidiary to, rather than integral to, implementation of the purpose and objective of the section. The language of the qualifications statement sentence focuses on “any person who desires to be considered for appointment” rather than on the “appointing authority”. Arguably, this sentence does not even limit the scope of potential candidates an appointing authority may consider to those submitting qualification statements because it does not mandate that the

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appointing authority shall take or refrain from any action; it merely *directs interested persons* what to do if they wish to be considered for an appointment. Thus, while appointing authorities should take note of this language while exercising their appointment authority, I believe that they do possess substantial discretion with respect to determining the scope of potential candidates for appointments.

In consideration not only of applicable Massachusetts case law, which states that the term “may” is to be construed permissively rather than a mandate, but also the underlying purposes of the Charter to vest broad appointment authority in the Board of Selectmen and to afford more, rather than less, time to appointing authorities to review the qualifications of candidates, I believe that Section 7-13 should not be construed to preclude an applicant from submitting his/her qualifications beyond the 10 day time frame noted in that Section. I believe that appointing authorities maintain discretion with respect to the application of this directory language, particularly where a “late” submission of qualifications by a candidate is due to some justifiable cause or good faith misunderstanding.

FALL 2012 TOWN MEETING WARRANT ARTICLES

ARTICLE 1 - TO APPOINT ONE MEMBER TO THE BOWER’S FUND

To see if the Town will vote to appoint one (1) member to the Bower’s Fund for a term of five (5) years; or act in relation thereto.

Selectman Robert Correnti, seconded by Selectman Michael Rosa, made a motion that the Board recommend Article 1 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

ARTICLE 2 - TO HEAR REPORTS OF TOWN DEPARTMENTS, COMMITTEES & OFFICERS

To see if the Town will vote to hear and act upon the reports of Town Departments, Committees and Officers; or act in relation thereto.

Selectman Robert Correnti, seconded by Selectman Michael Rosa, made a motion that the Board recommend Article 2 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

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ARTICLE 9 - TO AMEND VARIOUS FISCAL YEAR 2013 TOWN AND SCHOOL OPERATING BUDGET LINE ITEMS

To see if the Town will vote to raise and appropriate the sum of \$1,300,000 to amend the following Fiscal Year 2013 Town and School budget line items:

Account Number	Account Name	Amount
13510-5110	Town Accountant Dept - Salary	\$ 9,000
14110-5110	Assessor Dept - Salary	9,000
17130-5200	Conservation Commission - Contract Services	20,000
21020-5400	Police Dept - Supplies & Expenses	25,000
22010-5130	Fire - Overtime	25,000
22020-5400	Fire Dept - Supplies & Expenses	25,000
23130-5200	Ambulance - Contract Services	20,000
42220-5400	Highway Dept - Supplies & Expenses	100,000
45010-5132	Water Dept - Flushing Program	50,000
72040-5800	General Fund Capital	367,000
30020-5400	Billerica Public Schools – Supplies & Expenses	150,000
30030-5200	Billerica Public Schools – Contract Services/Leases	350,000
30040-5800	Billerica Public Schools – Contract Outlay	150,000
	Total Amendment	\$ 1,300,000

Or act in relation thereto.

Very, very lengthy discussions ensued regarding all aspects of the Fiscal Year 2013 Town Budget and the fact that Selectman Michael Rosa wanted to put \$600,000 towards lowering the tax rate to ease the burden on residents and the other four Selectmen felt it would better serve the taxpayers by putting this \$600,000 towards the Stabilization Fund.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 9 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

ARTICLE 10 - TO ACCEPT CHAPTER 32B SECTION 20 TO ESTABLISH AN OTHER POST-EMPLOYMENT BENEFITS (OPEB) LIABILITY TRUST FUND

To see if the Town will vote to accept the provisions of M.G.L. Chapter 32B, Section 20 to establish an Other Post-Employment Benefits (OPEB) Liability Trust Fund; or act in relation thereto.

Brief discussions ensued.

Selectman Michael Rosa, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 10 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

ARTICLE 11 - TO TRANSFER FROM HEALTH INSURANCE BUDGET INTO OTHER POST-EMPLOYMENT BENEFITS (OPEB) LIABILITY TRUST FUND

To see if the Town will vote to transfer from the Town/School Shared Cost – Health Insurance Budget (91070-7012) the sum of \$400,000 and to appropriate the sum to fund the Other Post-Employment Benefits (OPEB) Liability Trust Fund; or act in relation thereto.

Brief discussions ensued.

Selectman Robert Correnti, seconded by Selectman Michael Rosa, made a motion that the Board recommend Article 11 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

ARTICLE 12 - TO FUND THE DEBT STABILIZATION FUND

To see if the Town will vote to raise and appropriate the sum of \$724,588 to fund the Debt Stabilization Fund; or act in relation thereto.

Very lengthy discussions ensued.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 12 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

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ARTICLE 13 - TO FUND TOWN CENTER RECONSTRUCTION AND TRAFFIC IMPROVEMENTS

To see if the Town will vote to raise and appropriate, borrow and/or transfer from available funds the sum of \$9,800,000 for the Town Center Reconstruction and Traffic Improvements Project; or act in relation thereto.

Very lengthy discussions ensued.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 13 to Town Meeting.

It was voted: 4 – In Favor
 1 – Opposed (Selectman Rosa)

ARTICLE 14 - TO FUND TOWN CENTER RECONSTRUCTION AND TRAFFIC IMPROVEMENTS

To see if the Town will vote to reauthorize the unexpended balances of the previously approved Town Meeting Articles:

2000 Annual Fall Town Meeting, Article 12	\$ 136,730
2001 Annual Fall Town Meeting, Article 6	\$1,000,000

to fund the Town Center Reconstruction and Traffic Improvements Project; or act in relation thereto.

Brief discussions ensued.

Selectman Dave Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 14 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

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ARTICLE 15 - TO FUND TOWN CENTER RECONSTRUCTION AND TRAFFIC IMPROVEMENTS

To see if the Town will vote to transfer from Free Cash the sum of \$1,200,000 to fund the Town Center Reconstruction and Traffic Improvement Project; or act in relation thereto.

Brief discussions ensued.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 15 to Town Meeting.

It was voted: 4 – In Favor
 1 – Opposed (Selectman Rosa)

ARTICLE 16 - TO FUND GENERAL FUND CAPITAL BUDGET

To see if the Town will vote to raise and appropriate the sum of \$500,000 to fund a new General Fund Capital Budget (72040-5850); or act in relation thereto.

Brief discussions ensued.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 16 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

ARTICLE 17 - TO FUND THE SUBSTANCE ABUSE COMMITTEE

To see if the Town will vote to transfer from Free Cash the sum of \$25,000 to fund the Substance Abuse Committee; or act in relation thereto.

Brief discussions ensued.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 17 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

ARTICLE 18 - TO FUND REGULATORY COMPLIANCE OF DPW FACILITIES

To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money to fund \$55,000 for regulatory compliance audits for DPW facilities on Boston road and the Wastewater Treatment Plant per the Consent Decree issued by DEP/EPA; or act in relation thereto.

Brief discussions ensued.

Selectman David Gagliardi, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 18 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

ARTICLE 28 – TO FUND MIDDLESEX CORPORATE PARK SEWER AND ROAD BETTERMENT ASSESSMENT

To see if the Town will vote to borrow \$5,000,000 for the Middlesex Corporate Park Sewer and Road Betterment Assessment; or act in relation thereto.

Brief discussions ensued.

No vote was taken on Article 28.

ARTICLE 29 - TO ACCEPT CHAPTER 126 OF THE ACTS OF 1988 AND CHAPTER 73 OF THE ACTS OF 1986

To see if the Town will vote to accept the provisions of M.G.L. Chapter 126 of the Acts of 1988 and Chapter 73 of the Acts of 1986 in order to offer optional additional real estate tax exemptions to persons who qualify for current property tax exemptions under Clauses 17D, 22, 22A, 22B, 22C, 22D, 22E, 37A and 41C of Section 5 of M.G.L. Chapter 59 in the amount of a uniform 60% increase for all persons qualified; or act in relation thereto.

Brief discussions ensued.

Selectman David Gagliardi, seconded by Selectman Michael Rosa, made a motion that the Board recommend Article 29 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

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ARTICLE 30 - TO EXEMPT POLICE DEPARTMENT POSITION FROM CIVIL SERVICE

To see if the Town will vote to authorize and direct the Board of Selectmen to petition the Legislature to pass an Act to exempt from Civil Service Law the position of Building Maintenance Craftsman in the Billerica Police Department; or act in relation thereto.

Brief discussions ensued.

Selectman Michael Rosa, seconded by Selectman Robert Correnti, made a motion that the Board recommend Article 30 to Town Meeting.

It was voted: 5 – In Favor
 0 – Opposed

MEETING SCHEDULE

October 15 and 29, 2012

November 5 and 19, 2012 (changed from November 12 and 26)

October 2, 4, 9, 11, 16, 18, 23 and 26 at 6:00 PM prior to Town Meeting, if necessary.

Secretary David Gagliardi stated the November 19th, 2012 Board Meeting will not be televised live.

Chairman Andrew Deslaurier stated today is my 7th Wedding Anniversary and I chose to spend it with these gentlemen. I want to say “Happy Anniversary” to my understanding wife!

Selectman Michael Rosa, seconded by Selectman Robert Correnti, made a motion that the Board adjourn at 9:46 PM.

It was voted: 5 – In Favor
 0 – Opposed

A TRUE COPY ATTEST

Susan Michelini, Recording Secretary